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In re Application of
Young et al.
Application No. 08/851,965
Filed: 6 May, 1997
Attorney Docket No. 224/042

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ON PETITION

This is a decision on the petition to revive under 37 CFR 1.137(b), filed on 13 May, 1999, and supplemented by facsimile on 17 May, 1999, in which petitioner states that the application was erroneously held abandoned prior to the expiration of the maximum obtainable time period for reply to the examiner's communication mailed on 17 November, 1998. Therefore, the petition is first treated under 37 CFR 1.181 as a petition to withdraw the holding of abandonment for the above-identified application, or in the alternative under 37 CFR 1.137(b)

The petition to withdraw the holding of abandonment is **GRANTED**.

The petition under 37 CFR 1.137(b) is **DISMISSED AS MOOT**.

The application was held abandoned on 10 September, 1998, for failure to file a timely response to the non-final Office action mailed on 9 June, 1998. The Office action set a three (3) month shortened statutory period for reply. A two (2) month extension of the time for reply was obtained on 8 September, 1998.

Petitioner filed an amendment with the two (2) month time extension on 8 September, 1998. The Examiner informed petitioner by Office communication mailed on 17 November, 1998, that the amendment appeared to be a *bona fide* reply, but was non-responsive, and that petitioner had one (1) month to supply the correction or omission to avoid abandonment. The Office communication also stated, however, that extensions of time under 37 CFR 1.136(a) were available.

Notice of Abandonment was mailed on 4 March, 1999. On 17 May, 1999, petitioner submitted (a) an amendment, (b) a request and payment for a three (3) month time extension, (c) a petition to withdraw the holding of abandonment, and, in the alternative to revive under 37 CFR 1.137(b), and (d) a terminal disclaimer.

The three-month extension of time requested and paid by petitioner will not save this application from abandonment. The Petition For Extension Of Time, filed on 17 May, 1999, however, authorizes the Office to charge petitioner's deposit account for the appropriate extension fee, and will be construed as authorizing the Office to charge petitioner's deposit account the fee necessary to avoid abandonment. As the instant reply is timely filed with a five-month extension of time, petitioner's deposit account, No. 12-2475, will be charged the additional fee of \$490.00 required by law for a five (5)-month extension of time by a small entity.

As the petition under 37 CFR 1.137(b) is dismissed as moot, the petition fee of \$605.00 will be refunded to petitioner's deposit account. Furthermore, the Terminal Disclaimer filed on 17 May, 1999, is not required. The terminal disclaimer fee of \$55.00 will be refunded to petitioner's deposit account. The Terminal Disclaimer will be retained in the application file, but will not be entered.

The holding of abandonment is hereby withdrawn. The application file will be forwarded to Technology Center 1600 for consideration of the reply filed on 17 May, 1999.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Douglas I. Wood at (703) 308-6918.



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